

COMMITTEE ON LANDS AND BUILDINGS

October 21, 2003

6:00 PM

Chairman Thibault called the meeting to order.

The Clerk called the roll.

Present: Aldermen Thibault, Gatsas, Pinard, DeVries, Garrity

Messrs: R. Johnson, T. Arnold, P. Church, R. MacKenzie

Chairman Thibault addressed Item 3 of the agenda:

Communication from Robat Holdings, LLC and Evergreen Press, Inc. requesting a utility easement on City property to provide access to 60 Rogers Street (former Leighton Machine Mill Building) as Evergreen Press, a tenant in that building needs upgraded electric service.

Deputy Clerk Johnson stated there is a recommendation to add a sentence to the easement deed that is presented. It is a communication from the Parks & Recreation Department and the line would be "grantees agree to a one time relocation of the facilities and Evergreen Press, Inc., the current tenant of 60 Rogers Street, Map 296, Lot 16, who will benefit from the service agrees to bear the related costs." If you, in fact, approve this easement and recommend that it be authorized to be executed it would be with that additional language added as part of your motion.

Alderman DeVries asked do we have that in writing.

Deputy Clerk Johnson answered yes you do in front of you. It is in bold in the center of the communication from Parks & Recreation.

Alderman DeVries moved the item for discussion as amended. Alderman Pinard duly seconded the motion.

Alderman DeVries stated I first want to hear from Parks & Recreation. I understand that we have something in writing that there is no problem and no interference with the proposed bike/pedestrian trail.

Mr. Ron Johnson responded yes we have met with the property owners of 60 Rogers Street and Mr. Peter Church. When the easement language was drafted we did have that concern. The only way to bring electric service to this particular property is on that railroad line. We met with Public Service and they determined that they could put the pole in the best location that they can. We just want to be reassured that when we go to design this trail, which could be five or ten years down the road that we want to be able to have the ability if we need to relocate the utility pole. That is why we are recommending this language be added to the easement. As it is now planned, it looks like the poles would be out of the way. We haven't done any survey or final engineering in this section and that is why we are not sure exactly where the trail will be.

Alderman DeVries asked if the ownership of 60 Rogers Street transfers between now and when you might need those poles moved do we have that covered. This addresses the current tenant and seems to be all current day language. Is there anything in their for heirs and assigns or whatever that language might be to encumber future...

Mr. Johnson interjected I will probably have to defer to the City Solicitor. We discussed it a little bit but maybe Mr. Arnold has a little more detail on it.

Deputy Solicitor Arnold stated certainly the duty to pay for the change encumbers the business, which we will add as the signatory of the easement. They would be obligated to pay for that change whenever it is made. Quite frankly there might be the danger that they are no longer in existence or something like that when the change is made but they are obligated.

Alderman DeVries asked and you are saying the easement would follow the deed to encumber the future as well.

Deputy Solicitor Arnold answered it encumbers the business.

Alderman Gatsas asked, Mr. Arnold, so what you are saying is it doesn't encumber the property but it encumbers the tenant and if the tenant is no longer there we don't have an encumbrance.

Deputy Solicitor Arnold answered in so are as the duty to pay for relocation of poles, yes.

Alderman Gatsas asked so who is going to pay for the relocation of the poles then.

Deputy Solicitor Arnold answered I guess I would defer to Parks & Recreation at this time. I don't know as there is another party that would be willing to do that. Hopefully it wouldn't have to be done in the first place.

Mr. Johnson stated I think if it came to the situation where the tenant was no longer there then that service wouldn't be needed and the City could request PSNH to remove those poles because they are no longer providing service.

Alderman DeVries stated I think the one question we haven't asked of the City Solicitor is is there a way that we can word this so it will travel with the deed and encumber future businesses as well.

Deputy Solicitor Arnold responded as I said it encumbers the business...

Alderman DeVries interjected in the future.

Deputy Solicitor Arnold replied into the future but if the business were no longer in existence you might have a problem but it would encumber the business in the future, yes.

Alderman DeVries asked so if this business does transfer to a new owner, say if the existing one that has made the easement with us goes out of business and there is a new business in there is there a way that we can word this easement today that it will follow and encumber those in the future.

Deputy Solicitor Arnold answered we could add language that says that any assigned so to speak but that, of course, would depend on how the transition between businesses actually took place. I mean if the business were to go out of business and some new printing business were to open up in the same space no that wouldn't cover the new business. If the business were sold or the rights to the business were sold then we could arrange that but otherwise I don't know how you would arrange for some business that isn't presently in existence at that location to pay for the relocation of the poles.

Alderman DeVries stated could I ask for input from Evergreen Press.

Mr. Peter Church stated I am the owner of Evergreen Press, the tenant at 60 Rogers Street. I am the one who is willing to pay for the poles to be moved if necessary for the trail. The landlord of the building isn't willing to do that because the mortgages he has on the property have encumbrances on the building. As I stated in the communication, I am willing to pay for the relocation of the poles.

Alderman Shea stated I met with Peter. He came to my house and we discussed this. Peter is obviously a business person within Ward 7. This particular area, for the benefit of members of this Committee, has been developed by Tom DeVoise and is a very large real estate enterprise, which was formerly occupied by Lake Machinery, which was paying very little taxes and for way of discussion I would like the City Solicitor to react to my question. Is this unusual? Alderman DeVries was bringing up certain things but is this an unusual kind of arrangement they are doing or is this a procedure that is normally followed?

Deputy Solicitor Arnold responded certainly the City granting an easement for electric service is not unusual. The unusual factor here is that it is for the benefit of a particular business rather than electric users in general as PSNH usually does with the City so yes and no.

Alderman Shea asked has there been precedence for this.

Deputy Solicitor Arnold answered not that I am aware of. As I said there has certainly been precedent for general electrical service but off the top of my head I am not aware of one for the benefit of a particular business.

Alderman Shea moved to approve the easement request and to recommend that the Board authorize the Mayor to execute the deed subject to review and approval of the City Solicitor.

Chairman Thibault stated I would like to add one thing and I think Alderman DeVries touched on it just now. I would like to see it follow whatever tenant might come there. I would hate to see Parks & Recreation eventually end up having to pay to have these poles or that pole removed. Isn't there a way in the contract, Tom, that we can make sure that whatever tenant comes there has to pay?

Deputy Solicitor Arnold responded as I said we could put in language that if the business were sold as an entity or assigned you might be able to but I am not aware of any manner you could do it for some potential future unidentified business. I don't know how to do that.

Chairman Thibault asked couldn't we make this part of the permit that they would get.

Deputy Solicitor Arnold answered I don't know how you would do that.

Alderman Gatsas stated Mr. Church I noticed that it is Evergreen Press, Inc. who is signing this. Would you have a problem personally signing for it so that if there

is a problem and there is a change and there is no tenant that you personally are responsible for it.

Mr. Church responded yes. The Inc. is a typo. The business really is a partnership with my wife. We are both personally responsible for all of the liabilities of the business.

Alderman Gatsas asked so you would not have a problem signing personally.

Mr. Church answered no.

Alderman Gatsas moved to approve the easement requested and amend the language in the easement deed so that it includes Evergreen Press LLC with personal guarantees on it. Alderman DeVries duly seconded the motion.

Chairman Thibault called for a vote. There being none opposed, the motion carried.

Chairman Thibault addressed Item 4 of the agenda:

Communication from Robert MacKenzie, Planning Director, regarding the sale of Old Wellington Road property.

Deputy Clerk Johnson stated we would like to note for the record that there was a handout distributed to the Committee.

Mr. MacKenzie stated there were three things that I wanted to cover and it shouldn't take too long. The first is a letter that I did submit earlier to the Committee. I am not sure if it is in your package. It is related to potentially setting aside monies for capital improvement. I did meet with the neighborhood, as well as Alderman Pinard. There were some legitimate issues raised, particularly the traffic issues in the area. It is a fairly large neighborhood that only has one exit point out to Wellington Road. I did review with the Highway Department what some of the options were and there is at least one option to have a second means of access into this area adjacent to the intersection of Roy Drive and Wellington Road. I would be recommending, if the Committee does decide to sell this particular parcel...as you may remember a portion of the proceeds would be dedicated to the budget - \$650,000 and the balance would be going into a capital reserve. I would be recommending that \$125,000 would be earmarked in that reserve for capital improvements related to this area. I would also add that with a mosque being developed in that area or likely to be developed in that area the traffic issues would be getting more and more difficult. The second item I wanted to cover relates to the zoning. If the Board decides to proceed with this,

there would be a commitment to consider rezoning the entire parcel. Right now most of the parcel is zoned multi-family. A small piece isn't. In order to accomplish the development projects proposed, that small piece would have to be rezoned. Now you may remember that related to another project on Candia Road, the Solicitor determined that the requirement for rezoning parcels to R-SM had been 10 acres. We would have to modify that ruling in the zoning ordinance to allow smaller pieces to be rezoned and I think that was the original intent of the ordinance – to have districts that were 10 acres not just individual tracts. Thirdly, I did want to cover what we are recommending in terms of sales. There were three respondents that responded last Friday to the additional parameters this Committee set out. There were three specific parameters set. One of the groups decided not to provide a number and not to provide a number and not to participate anymore so there were two firms. One made an offer of \$1,211,700. That was Pristine Properties, Inc. represented by Ron Dupont. The other was \$1,100,200 who was Dick Anagnost with the Manchester Housing and Redevelopment Authority. We are recommending at this point that the higher bid be accepted by the City. The caveat being that we would like the City Solicitor's Office to review in detail the wording of the offer. Our staff has reviewed it and we do have some questions about whether it complies with the three requirements. Those are my three points.

Chairman Thibault asked what is the amount that you said Ron Dupont came in with.

Mr. MacKenzie answered \$1,211,700.

Alderman Gatsas asked, Mr. MacKenzie, do I understand that they have a due diligence period for 60 days and then the deposit is returned to them.

Mr. MacKenzie answered they are requesting a due diligence period and that is basically the issue that I would like to have the Solicitor review. In verbal discussions with the applicant he basically said that the \$100,000 was non-refundable but that did not appear to me to be consistent with that parameter.

Alderman Gatsas stated somebody has set out a timeline here. Is this your timeline or the developer's timeline.

Mr. MacKenzie answered that is the developers.

Alderman Gatsas stated and then I noticed in your letter it said that should this fall through that you would be able to execute a purchase and sales agreement with the second highest bidder. Let's take some assumptions. Let's assume that he goes forward and gives us a \$100,000 deposit and then sometime in April decides the economy has changed and his \$100,000 is at risk. The City could be at risk for

much greater than that because the value of the property may have declined drastically. So we are now taking the risk by this timetable. I thought it was the understanding of this Committee that there would be no contingencies. That it would be a \$100,000 non-refundable deposit and a closing without any subject to's so that in case they don't close the City can go after them for a specific performance to make sure that we have the ability to recover whatever was lost from the sales price. Now that is not what this is saying.

Mr. MacKenzie responded the due diligence, as I understand my reading of the offer is 60 days from the acceptance, which means that the due diligence would expire by the end of December. So in theory the Board could react and go back to the second highest bidder and try to get it accomplished and sold within this fiscal year.

Alderman Gatsas stated but the \$100,000 at that point would be refunded to them.

Mr. MacKenzie responded yes they way they have worded it and again I am not sure if that is consistent. They are wording it that if there is a severe issue with the property they would try to get the deposit back during that due diligence period, that 60-day period.

Alderman Gatsas stated and if I look at the next agreement there is no due diligence factor. They are closing and going forward without the due diligence.

Mr. MacKenzie responded that is correct.

Alderman Gatsas stated so this Board would be putting a lot more at risk than just the \$111,000 difference in sales price.

Mr. MacKenzie responded there is somewhat more risk for the first option, yes.

Alderman Pinard moved to table this item.

There was no second.

Chairman Thibault stated when we are talking about \$112,000 the chances of the land being worth less than \$112,000 in a few months is kind of...it doesn't seem realistic to me. Bob, let me ask you. What would be your recommendation to this Committee?

Mr. MacKenzie responded my recommendation is that you do proceed with accepting the higher offer subject to verification by the Solicitor as to whether or not it is consistent and if the Solicitor determines that it is not consistent with the

parameters laid down by this group, the staff be authorized to execute the agreement with the second highest bidder so it does not have to come back to the Board and we can still meet the tax budget timeline.

Alderman Gatsas stated maybe I can help the Chairman so he can understand how the value could decrease. If interest rates should spike up in the next 90 days, Mr. MacKenzie, what do you think that the value of property per unit basis would go to? Do you think there would be a decline or does anybody want to speak to that?

Mr. MacKenzie responded apartments generally or the rate of increase of apartment rates has stabilized and in some cases gone down. I don't believe we will see any major increases in land costs for apartments. I might agree with you that if we waited until next June that there is a possibility of the land value decreasing but if it is until December it would be hard to say that there would be any significant decrease in the value.

Alderman Gatsas stated let's go back to your analysis. What you said to me was that rents have either stabilized or gone down. So if interest rates go up, the cost of construction is going to increase and the value of the property would probably go down.

Mr. MacKenzie responded in a theoretical sense, yes but the market doesn't always respond that quickly to interest rate changes. There is a significant demand for vacant land in the City and there are very few remaining vacant parcels left.

Alderman Gatsas asked if your demand is so great than why didn't the third bidder participate or why did we go from five bidders to two.

Mr. MacKenzie answered the one that declined in the latest round simply was not comfortable with the latest parameters, the non-refundable deposit.

Alderman Gatsas asked did the abutter ever have the ability to negotiate on this property.

Mr. MacKenzie answered no.

Chairman Thibault stated there is one thing that I would like to say. As a rule, as Chairman of this Committee at least I try to follow our staff's recommendation as to what they tell us. I believe that we in the City of Manchester pay staff big money to give us the information that we need to make decisions. I am going to have to go with that. The staff is recommending that we go with the highest bidder and that certainly is what I would do, however, I would entertain a motion from someone on the Committee for whatever they want to do.

Alderman Gatsas stated Mr. Chairman let me see if I can refresh your memory because if you are that keen on going with staff's recommendation, I had asked for staff's recommendation on the dispersal of the parking garage, which they recommended go to an RFP and this Committee didn't take that recommendation. I guess we have to be careful as to what recommendations we want to talk about when we go forward.

Chairman Thibault stated well there are always extenuating circumstances in every project. I am saying that the reason for that decision was based on the fact that this place had been there for 20 somewhat years and I felt that they should have first option. However, if the Committee wants to make any motion, I will entertain that.

Alderman Garrity stated with the highest bidder is it clear that it is a \$100,000 non-refundable deposit. Is that clear to the bidder yet.

Mr. MacKenzie responded it is clear that it is a \$100,000 non-refundable deposit. What is not clear is when that is triggered or when it becomes non-refundable. Basically they are saying it is a non-refundable deposit but the time is not triggered until the end of the due diligence period.

Alderman Garrity stated I have a problem with that.

Chairman Thibault asked is it right then that we should table this pending more information or should we just go along with your recommendation at this point. I am as much in a quandary as you are. I know that there are some other Aldermen who are not on the Committee who want to speak to this.

Alderman Lopez stated I would urge the Committee to accept the Planning Director's recommendation to move forward and bring this to the full Board and that the Board approves the recommendation. He is going to be working with the City Solicitor in reference to the \$1.2 million and he has already indicated that if there is some legal aspects there that he will be going to the \$1.1 million. I think the most important thing is to keep the process still moving. If you table this, this is going to be here until next year. Let's face reality. We have worked on this thing for months. I think everybody has put a lot of work into this. I commend the Committee and I ask them to move this on to the full Board.

Alderman DeVries asked so the recommendation of staff is that we accept the highest proposal, the \$1.2 million and that you complete the due diligence period, the 60 days, and if the \$1.2 million bidder decides to back out and expects that refund of the \$100,000 deposit you would then in turn go back to the second

highest bidder and negotiate. Would it be up for negotiations or would his proposal stand as part of the RFP process?

Mr. MacKenzie responded what the Chairman asked before is how much time do we have. Normally I would prefer to have a ruling from the Solicitor's Office prior to bringing in a recommendation. In this case, we just got them to the Solicitor's Office yesterday so they did not have time. I have been trying to keep on a schedule that the Aldermen gave me of accomplishing this before October 31 and that is why I brought it forth without the Solicitor's recommendation. Now to Alderman DeVries' question. What I would anticipate is that the Solicitor would make a ruling on consistency or non-consistency within the next week so if in the next week they found that it was not consistent with the parameters that the staff would then click in and go to negotiate with the second highest bidder. It would likely happen...

Alderman DeVries interjected so within a one-week period this is all going to happen. It is not going to be that 60-day due diligence period?

Mr. MacKenzie answered right.

Alderman DeVries moved to authorize staff to go forward with the high bidder subject to review by the Solicitor regarding the parameters and if in fact the Solicitor advises that the bid does not meet the parameters the staff can continue with the second highest bidder.

Alderman Garrity asked the first bidder when do they plan on executing a purchase and sales agreement. Do they have a date for that? I am trying to look for it.

Mr. MacKenzie answered I believe they said prior to November 15.

Alderman Garrity stated what I would like to see happen is that both bids go to the Solicitor to be looked at and we can have a report to this Committee within the next couple of weeks.

Chairman Thibault stated I would certainly have no problem with this Committee meeting again next week if we have to. That is not a problem. If this is what you feel you need, Bob, I would be glad to do that or ask this Committee to go along with that. Give us a week so we can put everything together and then come back here. I would have no problem calling a meeting next week if the Committee agrees.

Alderman Garrity moved to have Mr. MacKenzie follow-up with the Solicitor's Office on the two bids and report back to this Committee before the next full Board meeting.

Alderman Lopez stated I think it is very important because if we had time that would probably be essential but the Finance Director at the end of the month is going to be sending all of this information up on the MS-1 and your decision here is very important to get to the full Board. I don't believe anything is going to be...you are asking for the same thing that the Planning Director is asking for, to move forward with the process. By doing that if we can get it to the full Board they can at least work out with staff and the tax rate could go from 3.1% down to 2.6% if this goes through. I think the Finance Officer needs to know from the full Board what direction the Planning Director should go in. Mr. Chairman, you can second the motion.

Chairman Thibault stated I understand what you are saying but if I don't get a motion from somebody on this Committee and a second...

Alderman DeVries interjected you did get a motion.

Chairman Thibault stated I would be glad to second that motion but that is two compared to the five people on this Committee so that is what you have to look at.

Alderman Gatsas stated Mr. MacKenzie I believe that the motion I made in this Committee was to go forward with a sale and negotiate with the five bidders who were there with a \$100,00 non-refundable deposit with no contingency. That is what this Committee voted 5-0 to do. Now I have Ms. Johnson looking in the record to make sure that is clarified. That was the motion. I made the motion so I am pretty knowledgeable about the motion that I made. It was a \$100,000 deposit, no contingencies and no due diligences. Nothing. Go forward and get it done. Do you remember that?

Mr. MacKenzie responded the three conditions as I remembered them and wrote them down was that \$100,000 non-refundable deposit, at least 15% affordable workforce housing and that the purchase and sale not be contingent on financing or number of units.

Chairman Thibault stated that is a little bit different.

Alderman Gatsas responded not that is the same thing. No contingency because with the due diligence he is going to go and find out how many units he can put on there.

Chairman Thibault stated well there is a motion on the floor and a second.

Alderman Garrity asked what is the motion.

Alderman DeVries stated the motion I made was to go forward with the highest bidder and to allow the City Solicitor to address the matter of whether it met the original parameters and if his finding is that it is outside the parameters then we would move to the second highest bidder and that would be done hopefully by the end of next week.

Chairman Thibault duly seconded the motion.

Alderman Gatsas asked what happened to the motion that Alderman Garrity made and you seconded.

Chairman Thibault answered I didn't second his motion.

Deputy Clerk Johnson stated nobody seconded that motion. The Chairman did not recognize that motion.

Chairman Thibault called for a vote on the motion.

Alderman Garrity asked can we have discussion on the motion before you take a vote.

Chairman Thibault stated not before the vote is taken.

Alderman Garrity responded well you have a motion and a second.

Chairman Thibault replied go ahead.

Alderman Garrity asked with this motion does this recommendation go on to the full Board or does it go to Tom Clark and Tom Arnold's office first.

Chairman Thibault responded it goes to the Solicitor as I understand Alderman DeVries' motion. I said I would be glad to call a meeting of our Committee next week if we need to.

Alderman Garrity asked so it doesn't come to the full Board tonight.

Chairman Thibault answered no it doesn't.

Alderman Garrity stated well the City Clerk is saying yes it does. What is right?

Deputy Clerk Johnson stated my understanding is that the motion on the floor and maybe I am incorrect but my understanding is that you are basically stating to have them negotiate with the high bidder following review by the City Solicitor. If the City Solicitor says it is not consistent with it then they would be negotiating with the second highest bidder. In order for them to do that, that needs to go back out to the Board because that was part of the motion at the Board level. The Board expected a report back by the end of October.

Chairman Thibault stated so the Board will have to vote on it this evening.

Deputy Clerk Johnson responded yes if it passes the Committee.

Chairman Thibault called for a vote. Alderman Gatsas requested a roll call vote. Aldermen Gatsas, Pinard, and Garrity voted nay. Aldermen DeVries and Thibault voted yea. The motion failed.

Chairman Thibault asked so it doesn't go to the Board now is that what you are telling me.

Deputy Clerk Johnson answered that is correct.

Alderman Garrity moved that we send the proposal to the Solicitor's Office for review and report back to this Committee. Alderman Gatsas duly seconded the motion.

Alderman DeVries stated if this does not go to the full Board tonight it is my understanding that the tax rate cannot benefit from the sale. We heard earlier...is that correct? It will miss the parameters for the Assessors and so forth.

Mr. MacKenzie responded several months ago we had set the date as October 31 because we are never quite sure when that tax rate is going to be set. I still don't know. I am not sure. I don't see the Finance Director here. It could be as late as the middle of November sometimes and it is as early as the end of October. I am not aware of when that will be done.

Alderman DeVries stated I am aware that we did hear earlier at the Accounts meeting that the difference is between 3.1% and 2.6% with this. If this Committee is so inclined to go forward with this and it is a .5% decrease in the tax rate why would we not want to allow it to move along in its process instead of derailing it tonight if we are so inclined. If you are opposed I understand but if you are inclined it should move along tonight.

Chairman Thibault stated before we go any further I wonder if we could ask the Mayor to give us some idea as to what is going on with the tax rate.

Alderman Garrity asked can I respond to Alderman DeVries.

Chairman Thibault answered I will give the chance to do that.

Mayor Baines stated it was stated quite clearly that we are prepared to go to Concord with all of our information. We have everything together now. The Assessors have given the number that they are comfortable with subject to any last minute adjustments but when we go to Concord to set the tax rate I think the sooner the better. It was accurately stated that sometimes it has been done as early as October when we have been able to finalize the numbers early and sometimes later when we have not. It is usually around the first week in November or the last week in October that we are able to do this. Again, the options are there before you to either have a 2.6% tax increase, which will probably be on of the smallest property tax increases in the State of NH this year...we are already getting indication that a lot of communities are coming in at around 10% except those who are going through a revaluation or 3.1%. It is in your hands right now and that is basically the lay of the land.

Chairman Thibault asked but if we do meet next Tuesday we would still basically meet those parameters right so that is still open to the Committee.

Mayor Baines answered that is correct.

Chairman Thibault stated okay now Alderman Garrity wanted to respond to Alderman DeVries.

Alderman Garrity stated I don't think it is the...this Committee set parameters on the bid and this bid does not meet those parameters. We cannot send something like this on to the full Board. It doesn't meet the parameters. Send it to Tom Clark's Office for review. We can meet next Tuesday and we can phone poll the Board. You know we phone poll the Board all of the time so let's just do that. They are responsible for us to send it on to the full Board when the bidder doesn't meet all of the parameters set by this Committee.

Alderman DeVries responded I thought that was pretty much what we added into the motion that the determination would come from the City Solicitor whether the parameters had been met. If not, then it would go to the second highest bidder where it is clear that the parameters have been met. The difference is \$116,000. It is worth a week's worth of review for the \$116,000 but if not we will drop down

to the second highest bidder and they will go forward with the sale. Does that not cover...I just wanted to ask Alderman Garrity does that not address your concern?

Alderman Garrity replied it is our responsibility to make recommendations to the full Board and our recommendation was that those parameters be met and they are not being met. It is one week. We can meet next Tuesday and phone poll the Board. I just don't see what the big deal is.

Chairman Thibault stated but if those parameters are met by that point what is the problem with that.

Alderman Garrity responded things may change by next week. I don't know. Tom Clark might have some other problem with it. Mr. MacKenzie, has Tom Clark looked at all of the documents that you presented to us tonight?

Mr. MacKenzie replied I know that I spoke with him today but he had reached no conclusion on it.

Alderman Garrity stated there is no conclusion from our attorney. It is irresponsible for us to send this on to the full Board when Tom Clark hasn't even looked at it yet.

Alderman Lopez stated I don't know, Alderman Garrity, what you are trying to accomplish but I think the Alderman DeVries is accomplishing the same thing and the Planning Director is accomplishing the same thing in the guidelines that the Committee set. The City attorney is going to make a determination. I mean how many times do we have to say it. I think this is a derail here and you don't want to lower the tax rate. That could be the problem. We should take it to the full Board and let the full Board decide.

Alderman Garrity responded I realize it is two weeks before Election Day but don't grandstand on me. No one is more concerned about the tax rate than me. It is irresponsible for this Committee to send it to the full Board. We are not doing our job. We shouldn't be sending it to them without having Tom Clark look at it.

Chairman Thibault replied but we are not sending it to the full Board. We are sending it to the City Solicitor. I think that is where the confusion is.

Alderman Garrity responded we are with the new motion.

Alderman Gatsas stated it just so happens that the City Clerk has found my motion. Could you read it to refresh Mr. MacKenzie's recollection?

Deputy Clerk Johnson stated the motion states “Alderman Gatsas moved that the RFP going out to the bidders have three stipulations. 1) that a minimum of 15% of workforce housing would accommodate the site, 2) that there be a \$100,000 non-refundable deposit, and 3) that there is no contingency on financing or the number of units.” He then went on to explain his motion and said “that would be the purest bid so that we as a Board are not dealing with a per unit cost because obviously they are going to deal with the variation of number of units and this is the purest RFP that we can put out and have somebody come in and bid on it without any subject to’s. They should have done their due diligence while this whole process was going on.”

Chairman Thibault asked did that pass the full Board.

Deputy Clerk Johnson answered Alderman Garrity seconded the motion and the motion passed. This was at the Committee level on September 29.

Chairman Thibault asked did it pass the full Board.

Alderman Gatsas stated it never went to the full Board.

Deputy Clerk Johnson responded this was following the full Board’s action to send it out to RFP. This was a discussion regarding the RFP’s.

Alderman Gatsas stated so the due diligence, Mr. Chairman, was precisely in there to make sure the due diligence was done by everybody before the RFP process. So, Alderman Lopez we are attempting to lower that tax rate and this Committee will do every indulgence it can to get the lowest tax rate for the citizens of Manchester.

Chairman Thibault stated in order to end this discussion why don’t we have a roll call vote on this.

Alderman DeVries stated I have a question for the City Solicitor. Is it possible for this Committee to recommend this evening the second highest bidder in light of the \$100,000 refundable enclosure with that first bid. Would that be in any violation of the RFP process if this Committee tonight recommends to bypass the first bidder because of the \$100,000 refundable deposit and to accept the second?

Deputy Solicitor Arnold responded I guess what I would suggest is in my quick review of the proposal I think it is unclear as to when the non-refundability comes into effect. What I would propose is simply to present a purchase and sale to the high bidder that meets the qualifications of this Committee being non-refundable

with the possible exception of title and see if they sign it or not. If they choose not to sign it, we can move on to the second bidder.

Chairman Thibault stated in order to end this discussion, why don't we go to a roll call vote and everybody can vote according to what they feel is right and end this discussion.

Alderman Gatsas responded if we are going to go with what the Solicitor just said somebody is going to have to amend the motion.

Chairman Thibault replied well you can make whatever motion you want but I am saying let's do something to get rid of this because it is a mess as it is. Let's do something to get rid of it. Make a motion or do something.

Alderman Garrity stated there is already a motion on the table.

Alderman Pinard stated we have been going around here for about 10 minutes and we are not getting anywhere. Everything is developer and developer and money. I represent the people in that area and what is being planned here tonight is not fair to those people there. I think that we should have a plan like Mr. MacKenzie stated so those people can go to bed at night and not worry about a developer coming in and putting something they don't want there. There is not even a plot plan. I don't think it is fair for those people on Old Wellington Road or Eastern Avenue. I made a motion to table. That was the reason. I wanted them to come back with some kind of plan. Right now all you are thinking about is the money. Forget the money and think of the people who are paying the taxes.

Chairman Thibault responded all I am looking for is a second to your motion if I could get one. However, I think we should end this discussion. We have a few other things going on in this Committee.

Alderman O'Neil stated just for clarification, Mr. Chairman, my understanding of the procurement process that was used here was an RFP. We seem to have taken a Request for Proposals and with proposals you usually look at the quality of the proposal and what is in them. It is not highest bidder or lowest bidder or any of that and somehow we have turned this into a bid.

Alderman Gatsas responded that is not true.

Alderman O'Neil that is all I keep hearing tonight. Highest bid, highest bid, highest bid, not quality of the proposal and what has been presented. I have a concern about that in moving forward on this. I have to agree with some of my colleagues. I don't believe that what is referred to as the highest bidder has met

the qualifications. That is my personal opinion. We need to look at the process that was used and what we are allowed to do in that process. Thank you.

Chairman Thibault asked is there any other motion.

Deputy Clerk Johnson stated there is a motion on the floor to send this item to the City Solicitor for review and report back to the Lands and Buildings Committee.

Chairman Thibault called for a vote. The motion failed with Aldermen DeVries, Thibault and Pinard being duly recorded in opposition.

Chairman Thibault asked so now what happens.

Deputy Clerk Johnson answered you have no motion on the floor.

Alderman Gatsas stated we have to do something with this item. You can't just leave it there.

Deputy Clerk Johnson responded you don't have to take an action on it.

TABLED ITEM

5. Properties on Riverdale Avenue.

Alderman Garrity moved to remove this item from the table. Alderman Gatsas duly seconded the motion.

Chairman Thibault called for a vote. The motion failed with Aldermen DeVries, Thibault and Pinard being duly recorded in opposition.

Alderman DeVries stated I had an item that should still show as being tabled on this agenda waiting for a determination from the Conservation Commission for about 14 months now. I have two questions that I would like to cover before we get into this agenda item. My first question is why is that item still not showing?

Deputy Clerk Johnson stated the Clerk placed only three items on the agenda because we knew you had a lack of time number one. Number two, I believe the item that you are referring to did not have a report back and this item did.

Alderman DeVries responded exactly my point. The second question is where it has no report somehow the Conservation Commission managed to very quickly get a report back on this. My recommendation is that we leave...because this particular land at Riverdale obviously is very important to the Conservation

Commission and evidently the land surrounding Crystal Lake is not because they have not sent me back that report so I would like to leave the Riverdale Properties tabled this evening to assure that the Conservation Commission will send us that report expediently so we can move them both forward for conservation easements at once as one package to the full Board. I would ask the indulgence of this Committee to assist me in getting a report from the Conservation Commission. That is the reason I am asking that we do not take this off the table and act on it tonight. I do know that the Conservation Commission has particular interest in the conservation easement on these properties.

Deputy Clerk Johnson stated the Clerk would note that the motion to remove it from the table did fail. It still remains on the table and if you want to entertain a motion to adjourn that would be appropriate.

Alderman Gatsas asked how did it fail. Can we have a roll call?

Chairman Thibault called for a roll call vote on the motion to remove the item from the table. Aldermen Thibault and DeVries voted nay. Aldermen Gatsas, Pinard and Garrity voted yea. The motion carried.

Alderman Garrity asked the Chairman of the Conservation Commission to come forward.

Chairman Thibault stated we only have four or five minutes left and we will have to recess this meeting and reconvene after the Board meeting if anything.

Mr. Michael Poisson stated I am the Chairman of the Conservation Commission. In regards to the Crystal Lake properties we are interested in those. I thought a letter was written but I guess not. Concerning the properties on Riverdale the Conservation Commission did visit those properties, Map 681, Lot 4, Map 680, Lots 1, 5, 5A, 7, 13, 13A, 13B and 14 and Map 681, Lot 4 and found them suitable for conservation. Tax Map 681, Lot 9 borders the NH Heritage Trail and provides access to the wildlife from Pine Grove Cemetery to the river. Wild turkeys and deer have been observed in this area and JoAnn O'Shaughnessy, a Conservation Commission member has observed young eagles feeding on this property. Tax Map 680, Lots 13 through 14 are located on the east side of Riverdale Avenue. It is a wooded property with a stream running along Riverdale Avenue which eventually empties into the Merrimack providing a wildlife corridor to the river. The other properties are along the Merrimack River and are wooded sites that provide access to the river for wildlife. Some of these trees have been used by bald eagles for perching sites. The Audubon Society of NH considers this area important to winterizing American Bald Eagles and strongly encourages the conservation of these lots. The river and its surroundings are heavily used by

these endangered birds to perch, roost and feed during the winter months. These parcels also provided shaded areas for viewing the Merrimack and access to the river for local property owners. Map 680, Lot 7 is abutting what the Tax Map 680 refers to as a "Public Boat Landing." The lot abutting that is City property also. Green space in the City dwindles each year due to development and any property owned by the City of Manchester that abuts a river, lake pond or wetland should be reserved for conservation purposes.

Chairman Thibault stated we are going to have to recess this meeting to call the special meeting of the Board of Mayor and Aldermen to order. We will reconvene once the roll call is completed.

On motion of Alderman DeVries, duly seconded by Alderman Pinard, it was voted to recess the meeting to allow the Special Meeting of the Board of Mayor and Aldermen to meet.

Chairman Thibault called the meeting back to order.

Mr. Poisson stated I also have letters here from the Audubon Society. This was also sent to the Lands and Buildings Committee. It states:

"Dear Committee Members:

The Audubon Society of New Hampshire is a statewide non-profit membership organization whose sole mission is to protect New Hampshire's natural environment for wildlife. Among other activities we work closely with the NH Fish & Game Department and the U.S. Fish and Wildlife Service to monitor and manage the State's endangered and threatened wildlife population, including the federally listed threatened and endangered bald eagle. The Merrimack River and Manchester, both the river itself and the adjacent flood plain on either side of the river are well documented as an important area for the bald eagle. They congregate in substantial numbers during the winter months. Manchester's portion of the river from the Amoskeag Falls down to the town line near Litchfield is especially attractive and important because of the tendency for fast flowing water to remain virtually ice free through the most severe winter conditions. We have currently learned that the Board of Mayor and Aldermen are considering a motion to sell several undeveloped City-owned lots located along Riverdale Avenue adjacent to the Merrimack River. Our organization, as well as the State and Federal agencies mentioned above have specific data to indicate that some of the trees from these

I also have a letter that was sent, well it is dated March 1, 2000. I guess this is the first time some of these properties were brought to the Committee on Lands and Buildings. It does concern

Alderman Garrity stated first I would like to thank the Conservation Commission for taking a couple of site walks down there and really taking their time and looking into the matter. Mr. Chairman, Riverdale Avenue is in my ward. A lot of the people down there want to see it go to Conservation. There is a lot of bald eagle activity down there, wild turkey and deer. I move to take the Conservation Commission's recommendation and move these lots to conservation.

Alderman Gatsas duly seconded the motion.

Chairman Thibault called for a vote. The motion failed with Aldermen DeVries, Pinard and Thibault being duly recorded in opposition.

Alderman DeVries stated as I had indicated before we had our recess, I am asking the indulgence of this Committee. I have been waiting for 14 months to get a conservation easement on similar properties. These are wetlands. They are very vital to the watershed of Crystal Lake. The indulgence that I need is I know that the Conservation Commission when we package the two properties together will very quickly respond. The urgency for both of these parcels is we are with election time upon us uncertain as to who will be there to protect and conserve the green space that we are looking to get. I do not have a problem with the Riverdale properties. I do not have a problem with the Conservation Commission. I do see

that this Committee has dragged their heels. We need to get these properties taken care of collectively. They need to be packaged together, brought back here and then we can forward them as one on to the Board recommending conservation easements. That is the indulgence that I ask and that is in the form of a motion that we table the properties until both of the properties surrounding Crystal Lake and Riverdale are ready to be packaged for conservation easements and forwarded on to the full Board.

Chairman Thibault asked to table.

Alderman DeVries answered no. That we package them together and wait for Riverdale until the Crystal Lake properties...the report is back from the Conservation Commission so that we can ask as one for those conservation easements.

Mayor Baines stated we need to get the regular meeting back on schedule because we have to do a public session and have the regular meeting. I would ask you to move this along.

Alderman DeVries moved to table this item. Alderman Pinard duly seconded the motion.

Deputy Clerk Johnson stated if you want to do them collectively then you would want to table this pending a collective action for Crystal Lake and Riverdale.

Alderman Gatsas asked for a personal privilege. This is the first time ever that I have ever seen an Alderman hold another Alderman's project hostage for their own. That is unheard of. There is no indulgence there. That is wrong.

Chairman Thibault asked what is she hold hostage.

Alderman Gatsas answered Riverdale Avenue until she gets her questions answered on Crystal Lake. That is wrong.

Alderman DeVries stated I think I started this report off saying that the Conservation Commission wants to see those lands around Crystal Lake protected. It has been a formality of improper administration. They just did not get the letter to the City Clerk that is required.

Chairman Thibault called for a vote on the motion to table. Alderman Gatsas requested a roll call vote. Aldermen Gatsas and Garrity voted nay. Aldermen Pinard, DeVries and Thibault voted yea. The motion carried.

There being no further business, on motion of Alderman DeVries, duly seconded by Alderman Pinard, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee